



MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

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Legislative Fiscal Analyst
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DATE: September 20, 2002

TO: Legislative Finance Committee

FROM: Taryn Purdy
Principal Fiscal Analyst

RE: Bill Draft for Attorney General Opinion

In issues where interpretation of statute is in dispute, and contradictory legal opinions are rendered, the state has recourse to an opinion by the attorney general. Until challenged in court, this opinion has all legal standing, to which all parties must adhere. A question arose at the October 2001 meeting of the Legislative Finance Committee concerning who has the legal authority to request an opinion from the attorney general. According to Greg Petesch, Chief of Legal Services for the Legislative Services Division, current statute does not allow a standing committee such as the Legislative Finance Committee to request an opinion.

At its December meeting, the Legislative Finance Committee voted to request draft legislation giving it and other statutory committees the authority to request an opinion from the Attorney General. That draft legislation is attached, and changes the statutes governing the following committees to allow them to request an attorney general opinion:

- 1) The Legislative Finance Committee
- 2) The Legislative Council
- 3) The Environmental Quality Council
- 4) The Legislative Audit Committee

The request for an opinion must be made by a vote of two-thirds of all members of the committee requesting the opinion.

Options

- 1) Authorize the legislation and appoint a sponsor.
- 2) Amend the legislation and appoint a sponsor.
- 3) Do not authorize pursuit of the legislation.

**** Bill No. ****
Introduced By *****
By Request of the *****

A Bill for an Act entitled: "An Act requiring the attorney general to give a written opinion to certain legislative committees upon request; authorizing the legislative council, the legislative finance committee, the legislative audit committee, and the environmental quality council to request attorney general opinions by a two-thirds vote; amending sections 2-15-501, 5-11-105, 5-12-205, 5-13-203, and 75-1-324, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-501, MCA, is amended to read:

"2-15-501. General duties. It is the duty of the attorney general:

(1) to prosecute or defend all causes in the supreme court in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;

(2) to represent the state in all bankruptcy proceedings in which the state's interest may be affected and in other debt collection proceedings at the request of a state agency;

(3) after judgment in any of the causes referred to in subsections (1) and (2), to direct the issuing of a process as may be necessary to carry the judgment into execution;

(4) to keep a register of all cases prosecuted or defended by the attorney general. The register must be open to the inspection of the public during business hours. The attorney general shall deliver the register to the attorney general's successor in office.

(5) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

(6) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of the county attorney's duties or to prosecute or defend appropriate cases in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;

(7) to give an opinion in writing, without fee, to the legislature ~~or~~, either house of the legislature, or a committee of the legislature authorized by law to request an opinion, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, or to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. The attorney general shall give the opinion within 3 months following the date that it is requested unless the attorney general certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion is controlling unless overruled by a state district court or the supreme court.

(8) to discharge the duties of a member of the board of examiners and

state board of land commissioners;

(9) to perform all other duties as required by law."

{Internal References to 2-15-501:

OK 2-15-225 }

Section 2. Section 5-11-105, MCA, is amended to read:

"5-11-105. Powers and duties of council. (1) The legislative council shall:

(a) employ and, in accordance with the rules for classification and pay established as provided in this section, set the salary of an executive director of the legislative services division, who serves at the pleasure of and is responsible to the legislative council;

(b) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules for classification and pay of legislative branch employees, other than those of the office of consumer counsel;

(c) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules governing personnel management of branch employees, other than those of the office of consumer counsel;

(d) adopt procedures to administer legislator claims for reimbursements authorized by law for interim activity;

(e) establish time schedules and deadlines for the interim committees of the legislature, including dates for requesting bills and completing interim work; and

(f) perform other duties assigned by law.

(2) The legislative council may, upon an affirmative vote of two-thirds of all the members of the council, request a written opinion from the attorney general upon any question of law relating to the powers and duties of the legislative council, the executive director of the legislative services division, and the legislative services division.

~~(2)~~(3) If a question of statewide importance arises when the legislature is not in session and a legislative interim committee has not been assigned to consider the question, the legislative council shall assign the question to an appropriate interim committee as provided in 5-5-202 or to the appropriate statutorily created committee."

{Internal References to 5-11-105:

OK 5-11-111 OK 5-13-305 }

Section 3. Section 5-12-205, MCA, is amended to read:

"5-12-205. Powers and duties of committee. The committee:

(1) may organize, adopt rules to govern its proceedings, and meet as often as necessary, upon the call of the presiding officer, to advise and consult with the legislative fiscal analyst;

(2) may employ and, in accordance with the rules for classification and pay adopted by the legislative council, set the salary of the legislative fiscal analyst. The legislative fiscal analyst shall serve at the pleasure of and be responsible for providing services to the committee.

(3) may exercise the investigatory powers of a standing committee under chapter 5, part 1, of this title;

(4) shall monitor the information technology policies of the department of administration with specific attention to:

(a) identification of information technology issues likely to require future legislative attention; and

(b) the evaluation of proposed information technology policy changes and the fiscal implications of the proposed changes and shall provide written responses to the department of administration communicating the committee's positions and concerns on proposed policy changes;

(5) may accumulate, compile, analyze, and provide information relevant to existing or proposed legislation on how information technology can be used to impact the welfare of the state;

(6) may prepare legislation to implement any proposed changes involving information technology; ~~and~~

(7) may, upon an affirmative vote of two-thirds of all the members of the committee, request a written opinion from the attorney general upon any question of law relating to the powers and duties of the committee, the legislative fiscal analyst, and the legislative fiscal division and to the financial matters of the state; and

~~(7)~~(8) shall, before each regular and special legislative session involving budgetary matters, prepare recommendations to the house appropriations committee and the senate finance and claims committee on the application of certain budget issues. At a minimum, the recommendations must include procedures for the consistent application during each session of inflation factors, the allocation of fixed costs, and the personal services budget. The committee may also make recommendations on other issues of major concern in the budgeting process, such as estimating the cost of implementing particular programs based upon present law."

{Internal References to 5-12-205: None.}

Section 4. Section 5-13-203, MCA, is amended to read:

"5-13-203. Meetings -- powers and duties -- compensation. (1) The committee shall meet as often as may be necessary during and between legislative sessions to advise and consult with the legislative auditor.

(2) The committee may, upon an affirmative vote of two-thirds of all the members of the committee, request a written opinion from the attorney general upon any question of law relating to the powers and duties of the committee, the legislative auditor, and the legislative audit division.

~~(2)~~(3) Committee members are entitled to receive compensation and expenses as provided in 5-2-302."

{Internal References to 5-13-203: None.}

Section 5. Section 75-1-324, MCA, is amended to read:

"75-1-324. ~~Duties~~ Powers and duties of environmental quality council. (1) The environmental quality council shall:

~~(1)~~(a) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

~~(2)~~(b) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

~~(3)~~(c) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

~~(4)~~(d) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

~~(5)~~(e) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an

interpretation of their underlying causes;

~~(6)~~(f) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

~~(7)~~(g) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

~~(8)~~(h) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

~~(9)~~(i) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and

~~(10)~~(j) perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the:

~~(a)~~(i) department of environmental quality;

~~(b)~~(ii) department of fish, wildlife, and parks; and

~~(c)~~(iii) department of natural resources and conservation.

(2) The environmental quality council may, upon an affirmative vote of two-thirds of all the members of the council, request a written opinion from the attorney general upon any question of law relating to the powers and duties of the council."

{Internal References to 75-1-324: None.}

END

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